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Honorable Judge Karen A. Overstreet
Hearing Location: Seattle, Courtroom 7206
Hearing Date: June 11, 2010
Hearing Time: 9:30 am
Response Date: June 4, 2010

4 **IN THE UNITED STATES BANKRUPTCY COURT**
5 **WESTERN DISTRICT OF WASHINGTON**

6 **IN RE:**

7 **SCOTT C TOWNLEY AND**
8 **STEPHANIE TASHIRO-TOWNLEY,**
9
10 **DEBTORS.**

CHAPTER 13 BANKRUPTCY

NO.: 09-22120-KAO

MOTION FOR RELIEF FROM STAY
BY THE BANK OF NEW YORK
MELLON F/K/A THE BANK OF NEW
YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS CWABS, INC.
ASSET-BACKED CERTIFICATES,
SERIES 2005-10 THROUGH ITS
SERVICING AGENT LITTON LOAN
SERVICING LP

14 **I. Introduction**

15 COMES NOW, The Bank of New York Mellon f/k/a The Bank of New York as Trustee
16 for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2005-10 through its
17 servicing agent Litton Loan Servicing LP its successors in interest, agents, assigns and assignors
18 (“Creditor”) and moves this court for an order terminating the automatic stay, allowing Creditor
19 to proceed with and complete any and all contractual and statutory remedies incident to its
20 security interests held in real property commonly described as 23639 Se 267th Pl, Maple Valley,
21 Washington 98038-5836 (“Property”), and legally described as set forth in the Deed of Trust
22 attached as an Exhibit to the affidavit on file with the court. Creditor further seeks relief in order
23 to, at its option, offer, provide and enter into any potential forbearance agreement, loan
24 modification, refinance agreement or other loan workout/loss mitigation agreement and to
25 contact the Debtor via telephone or written correspondence to offer such an agreement, which
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1 shall be non-recourse unless included in a reaffirmation agreement. Creditor further moves that,
2 absent objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration
3 of Creditor's secured position.

4 **II. Jurisdiction**

5 This court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and 28
6 U.S.C. § 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code. This
7 proceeding is defined as a "core proceeding" as that is defined in the Code.

8 **III. Standing**

9 Under 11 U.S.C. § 362, a party seeking relief from stay must be a "party in interest." To
10 establish that Creditor is a "party in interest", a creditor must establish that it has at least a
11 colorable claim to the property that is the subject of the motion. In the case at bar, Creditor's
12 claim is based on the Note and Deed. Creditor's interest in the Note and Deed is described
13 below.

14 The Deed acts as the security for the Borrower's payment on the Note. The Deed is
15 recorded with the county in which the property is situated as evidence of the debt described in
16 the Note for the benefit of any subsequent parties that may take an interest in the property
17 described.

18 The Note is a negotiable instrument as that term is defined by RCW § 62A.3-104. Under
19 the terms of the Note, Borrower is obligated to pay the instrument according to its terms at the
20 time it was issued. Creditor is entitled to enforce the note under R.C.W. § 62A.3-301.

21 Under RCW § 62A.3-301(i), the holder of a negotiable instrument is entitled to enforce
22 that instrument. The term "holder" includes the person in possession of a negotiable instrument
23 that is payable to a bearer that is in possession. RCW § 62A.1-201. A note indorsed to a
24 specific person or entity is a note "Specially Indorsed." RCW § 62A.3-205. The transfer of a
25 note secured by a deed of trust carries with it the security agreement as incident. See *Spencer v.*
26 *Alki Point Transportation Company*, 53 Wash. 77, 101 P. 509 (Wash. 1909).

1 In the case at bar, the Note establishes that Creditor is entitled to enforce the Note and
2 foreclose on the deed of trust because the Note is specially endorsed to Creditor. Therefore,
3 Creditor has standing to bring this motion.

4 **IV. Parties in Interest**

5 On or about July 26, 2005, Stephanie A Tashiro - Townley and Scott C Townley
6 ('Debtor' collectively hereafter), executed and delivered a note in favor of Countrywide Home
7 Loans, Inc. with an original principal amount of \$297,000.00.

8 The indebtedness under the note is secured by a deed of trust recorded against the
9 Property.

10 Scott C Townley and Stephanie Tashiro-Townley ('Debtor' collectively hereafter) filed
11 for protection under Chapter 13 of Title 11 of the United States Code on November 18, 2009.

12 Foreclosure is pending but on information and belief the sale date has not yet been set.

13 **V. Contractual Default**

14 Debtor is in default pursuant to the terms of the note for failure to make the required
15 payments. Payments are credited as last received to first due. Creditor's loan status reflects
16 payments now owing due after January 1, 2009. The following is a breakdown of the default:

Date of Contractual Payments	Amount	Total
January 1, 2009 to February 1, 2009	\$2,108.12	\$4,216.24
March 1, 2009 to August 1, 2009	\$2,400.11	\$14,400.66
September 1, 2009 to February 1, 2010	\$2,326.50	\$13,959.00
March 1, 2010 to May 1, 2010	\$2,207.01	\$6,621.03
Accrued Late Charges		\$1,270.04
Accrued Attorney Fees and Costs		\$3,094.47
Escrow Advance		\$7,664.83
Property Inspection Fees		\$40.00
BPO Fees		\$225.00
MFR Fees		\$700.00
Less Funds in Suspense		(\$291.99)
Total Default		\$51,899.28

1 These figures are an estimate only and are subject to change as additional fees are
2 incurred and payments are made or become due, including but not limited to the attorney fees
3 and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel
4 directly for a contractual reinstatement quote.

5 **VI. Post-Petition Default**

6 As of the date of this motion, the Debtor has accumulated the following post-petition
7 defaults:

8	Post-Petition Payment Due Date	December 1, 2009
9	Accrued Post-Petition Payment Default	\$13,600.80
10	Accrued Post-Petition Late Charges	\$632.46
11	Total Post-Petition Default	\$14,233.26

12 These figures are an estimate only and are subject to change as additional fees are
13 incurred and payments are made or become due, including but not limited to the attorney fees
14 and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel
15 directly for a post-petition reinstatement quote.

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1 **VII. Estimate of Obligation**

2 The approximate amount owed under the terms of the note is \$332,994.30. The
3 following is an itemization of this approximate amount:

4	Principal Balance	\$284,815.74
5	Accrued Interest	\$35,476.21
6	Accrued Late Charges	\$1,270.04
7	Accrued Attorney Fees & Costs	\$3,094.47
8	Escrow Advance	\$7,664.83
9	Property Inspection Fees	\$40.00
10	BPO Fees	\$225.00
11	MFR Fees	\$700.00
12	Less Suspense	(\$291.99)
13	Total Due	\$332,994.30

14 This total is an approximation of the lien. This estimate is provided only for the purposes
15 of this motion and cannot be relied upon for any other purpose, including tender of payoff. An
16 exact, itemized payoff figure will be obtained from Creditor upon written request to counsel for
17 the Creditor.

18 Other liens encumbering the Property include a scheduled debt in favor of Litton Loan
19 Servicing with an approximate balance owed of \$36,800.44.

20 **VIII. Value of the Property**

21 Debtor's sworn schedules value the Property at \$300,000.00.

22 **IX. Authority**

23 Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate,
24 annul, modify or condition the stay for cause, including the lack of adequate protection.
25 Adequate protection is lacking in cases where there is an insufficient equity cushion in the
26 subject property. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). An equity cushion is the

1 amount of value in property that exceeds the amount owed on the property such that a secured
2 creditor will not be subject to a loss in the event of a decrease in value while the property is
3 encumbered by the automatic stay. *Id.* at 1400 n.2. In determining the amount of value in
4 property, the likely costs of sale or liquidation must be considered. *In re Faires*, 34 Bankr. 549,
5 550 (Bankr. W.D. Wash. 1983). In the case at bar, considering the value of the Property,
6 Creditor's total lien, and the likely costs of liquidation, there is an insufficient equity cushion and
7 thus Creditor lacks adequate protection.

8 Under 11 U.S.C. § 362(d)(1), on request of a party in interest, the Court shall terminate,
9 annul, modify or condition the stay for cause. In this case Debtor intends to surrender the
10 subject property per the proposed Chapter 13 plan. Therefore, cause exists to terminate or annul
11 the automatic stay.

12 **X. Conclusion**

13 THEREFORE, Creditor requests this Court enter an order terminating the automatic stay
14 pursuant to 11 U.S.C. § 362 and that Creditor be allowed to immediately proceed with and
15 complete any and all contractual and statutory remedies incident to the security interests held in
16 the Property.

17 DATED this 12th day of May 2010.

18 **ROUTH CRABTREE OLSEN, P.S.**

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21 By: /s/ Jennifer Aspaas
22 Jennifer Aspaas, WSBA# 26303
23 Attorneys for Creditor
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